

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker**

Plaintiff,

v.

**Peninsula Creamery**, a California  
Corporation

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Peninsula Creamery, a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Peninsula Creamery owned Peninsula Creamery located at or about 900 High St, Palo Alto, California, in April 2021.

3. Defendant Peninsula Creamery owns Peninsula Creamery located at or about 900 High St, Palo Alto, California, currently.

1       4. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein is  
6 responsible in some capacity for the events herein alleged, or is a necessary  
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
8 the true names, capacities, connections, and responsibilities of the Defendants  
9 are ascertained.

10  
11       **JURISDICTION & VENUE:**

12       5. The Court has subject matter jurisdiction over the action pursuant to 28  
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
16 of action, arising from the same nucleus of operative facts and arising out of  
17 the same transactions, is also brought under California's Unruh Civil Rights  
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19       7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
20 founded on the fact that the real property which is the subject of this action is  
21 located in this district and that Plaintiff's cause of action arose in this district.

22  
23       **FACTUAL ALLEGATIONS:**

24       8. Plaintiff went to Peninsula Creamery in April 2021 with the intention to  
25 avail himself of its goods or services motivated in part to determine if the  
26 defendants comply with the disability access laws. Not only did Plaintiff  
27 personally encounter the unlawful barriers in April 2021, but he wanted to  
28 return and patronize the business several times but was specifically deterred

1 due to his actual personal knowledge of the barriers gleaned from his  
2 encounter with them.

3 9. Peninsula Creamery is a facility open to the public, a place of public  
4 accommodation, and a business establishment.

5 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
6 to provide wheelchair accessible dining surfaces in conformance with the ADA  
7 Standards as it relates to wheelchair users like the plaintiff.

8 11. Peninsula Creamery provides dining surfaces to its customers but fails  
9 to provide any wheelchair accessible dining surfaces.

10 12. A problem that plaintiff encountered was the lack of sufficient knee or  
11 toe clearance under the outside dining surfaces for wheelchair users.

12 13. Plaintiff believes that there are other features of the dining surfaces that  
13 likely fail to comply with the ADA Standards and seeks to have fully compliant  
14 dining surfaces for wheelchair users.

15 14. On information and belief, the defendants currently fail to provide  
16 wheelchair accessible dining surfaces.

17 15. Additionally, on the date of the plaintiff's visit, the defendants failed to  
18 provide wheelchair accessible door hardware in conformance with the ADA  
19 Standards as it relates to wheelchair users like the plaintiff.

20 16. Peninsula Creamery provides door hardware to its customers but fails  
21 to provide any wheelchair accessible door hardware.

22 17. A problem that plaintiff encountered was that there was a horizontal  
23 pull bar on the entrance doors that required tight twisting and grasping of the  
24 wrist.

25 18. Plaintiff believes that there are other features of the door hardware that  
26 likely fail to comply with the ADA Standards and seeks to have fully compliant  
27 door hardware for wheelchair users.

28 19. On information and belief, the defendants currently fail to provide

1 wheelchair accessible door hardware.

2 20. These barriers relate to and impact the plaintiff's disability. Plaintiff  
3 personally encountered these barriers.

4 21. As a wheelchair user, the plaintiff benefits from and is entitled to use  
5 wheelchair accessible facilities. By failing to provide accessible facilities, the  
6 defendants denied the plaintiff full and equal access.

7 22. The failure to provide accessible facilities created difficulty and  
8 discomfort for the Plaintiff.

9 23. The defendants have failed to maintain in working and useable  
10 conditions those features required to provide ready access to persons with  
11 disabilities.

12 24. The barriers identified above are easily removed without much  
13 difficulty or expense. They are the types of barriers identified by the  
14 Department of Justice as presumably readily achievable to remove and, in fact,  
15 these barriers are readily achievable to remove. Moreover, there are numerous  
16 alternative accommodations that could be made to provide a greater level of  
17 access if complete removal were not achievable.

18 25. Plaintiff will return to Peninsula Creamery to avail himself of its goods  
19 or services and to determine compliance with the disability access laws once it  
20 is represented to him that Peninsula Creamery and its facilities are accessible.  
21 Plaintiff is currently deterred from doing so because of his knowledge of the  
22 existing barriers and his uncertainty about the existence of yet other barriers  
23 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
24 discriminatory barriers again.

25 26. Given the obvious and blatant nature of the barriers and violations  
26 alleged herein, the plaintiff alleges, on information and belief, that there are  
27 other violations and barriers on the site that relate to his disability. Plaintiff will  
28 amend the complaint, to provide proper notice regarding the scope of this

lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,  
 2 including individuals who use wheelchairs or to ensure that, to the  
 3 maximum extent feasible, the path of travel to the altered area and  
 4 the bathrooms, telephones, and drinking fountains serving the  
 5 altered area, are readily accessible to and usable by individuals  
 6 with disabilities. 42 U.S.C. § 12183(a)(2).

7 29. When a business provides facilities such as dining surfaces, it must  
 8 provide accessible dining surfaces.

9 30. Here, accessible dining surfaces have not been provided in  
 10 conformance with the ADA Standards.

11 31. When a business provides facilities such as door hardware, it must  
 12 provide accessible door hardware.

13 32. Here, accessible door hardware has not been provided in conformance  
 14 with the ADA Standards.

15 33. The Safe Harbor provisions of the 2010 Standards are not applicable  
 16 here because the conditions challenged in this lawsuit do not comply with the  
 17 1991 Standards.

18 34. A public accommodation must maintain in operable working condition  
 19 those features of its facilities and equipment that are required to be readily  
 20 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21 35. Here, the failure to ensure that the accessible facilities were available  
 22 and ready to be used by the plaintiff is a violation of the law.

23  
 24 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 25 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 26 Code § 51-53.)

27 36. Plaintiff repleads and incorporates by reference, as if fully set forth  
 28 again herein, the allegations contained in all prior paragraphs of this

1 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
2 that persons with disabilities are entitled to full and equal accommodations,  
3 advantages, facilities, privileges, or services in all business establishment of  
4 every kind whatsoever within the jurisdiction of the State of California. Cal.  
5 Civ. Code §51(b).

6 37. The Unruh Act provides that a violation of the ADA is a violation of the  
7 Unruh Act. Cal. Civ. Code, § 51(f).

8 38. Defendants’ acts and omissions, as herein alleged, have violated the  
9 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
10 rights to full and equal use of the accommodations, advantages, facilities,  
11 privileges, or services offered.

12 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
13 discomfort or embarrassment for the plaintiff, the defendants are also each  
14 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
15 (c).)

16  
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide  
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the  
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
22 plaintiff is not invoking section 55 of the California Civil Code and is not  
23 seeking injunctive relief under the Disabled Persons Act at all.


24 2. For equitable nominal damages for violation of the ADA. See  
25 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
26 and any other equitable relief the Court sees fit to grant.

27 3. Damages under the Unruh Civil Rights Act, which provides for actual  
28 damages and a statutory minimum of \$4,000 for each offense.

1       4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3  
4 Dated: April 28, 2021

CENTER FOR DISABILITY ACCESS

5  
6 By: \_\_\_\_\_

7 Amanda Seabock, Esq.  
8 Attorney for plaintiff  
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